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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,756	11/20/2003	David J. Schneider	P 777	8798

7590
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08/26/2005

EXAMINER

EINSMANN, MARGARET V

ART UNIT PAPER NUMBER

1751

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/717,756

Applicant(s)

SCHNEIDER ET AL.

Examiner

Margaret Einsmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This action is in response to the amendment of 7/05/05. No claims have been canceled. The pending claims are 1-10.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1- 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 contains the trademark/trade name Avenal S-74. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a claimed wetting agent and, accordingly, the identification/description is indefinite.

The term "an effective period of time" in claim 1, "an effective amount of wetting agent" in claims 3 and 4, "an effective amount of sodium or potassium salt" in claims 5

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and 6 are relative terms which renders the claims indefinite. In each case there is no statement as to what purpose the amount is effective for, nor is there any metes and bounds defined in the specification as to what defines an effective amount in each case.

Claim 11 is improperly dependent on claim 10 because claim 10 requires the presence of a nonionic wetting agent while claim 11 defines said wetting agent as a particular one which is described on page 10 of the specification as being anionic.

Response to Arguments

Applicant's arguments are persuasive to moot the rejection under the second paragraph of 112 regarding the term Chloramine-T, which defines the chemical paratoluenesulfonochloramine, which is well known is evidenced by the dictionary provided. However the arguments regarding the remaining rejections above are not persuasive. Applicant argues that claim 11 is a specific claim and Avenal S-74 is defined in accordance with the specification. This argument is not persuasive for the reasons set forth in the rejection; that is, that Avenal-S is a trademark, which does not define the chemical associated with it. Regarding the term "effective amount of " , applicant has not stated what the components are effective for. The Chloramine-T is the bleaching agent. What are the other components effective for?

Applicant asks where on page 10 is Avenal S-74 defined as anionic. Avenal S-74 is defined as anionic because applicant states that it comprises a sulfonate group, which makes it an anionic surfactant.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Where is the basis for the composition used in claim 10, including the amounts of the ingredients? There is no basis especially for any amount of sodium phosphate or nonionic wetting agent. The examiner suggests replacing the composition with the one used in the examples of treating cotton T-shirts which is in the specification.

Applicant points to places in the specification which give the broad and preferred ranges of ChloramineT and wetting agent but does not provide basis for the composition, per se, as claimed in claim 10. Since claim 10 is an originally filed claim, The composition itself may be inserted in the specification to give antecedent basis for the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The rejections of claims 1-9 under 35 U.S.C. 103(a) as being unpatentable over Copeland, US 4,594,175 and/or US 4,711,738 has been mooted by applicant's amendment limiting the claims to a process of treating a stained textile substrate.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahmed, US 5,229,027. Ahmed teaches a detergent composition which may be used for bleaching (that is stain removal) which comprises a chlorine bleach compound in an amount to provide 0.5 to 5% available chlorine; 0 to 5% stable, water dispersible organic detergent and 0-40% of a builder salt. See col 4 lines 35-52 for the composition and column 15 lines 55-58 for the teaching that the compositions can be used to bleach laundry. In the examples in column 16, hypochlorite is the chlorine compound, sodium and potassium tripolyphosphate are the phosphate salts, and the surfactant is undefined. Also the components are provided in larger amounts than claimed.

It would have been obvious to the skilled artisan that the compositions as disclosed will be diluted with water upon use and thus contain the amount of each ingredient within the ranges claimed in claim 10 when used to treat clothing, since most bleaching compositions are provided as concentrates for home use and thus are not used neat; for example, Clorox. It would have been obvious to the skilled artisan to use chloramines-T in place of the hypochlorite used in the working examples because Ahmed states at col 6 line 57 that chloramine-T is suitable as the chlorine compound in the bleaching compositions. Regarding the surfactant component, Ahmed teaches both nonionic and anionic detergents for use in the compositions in columns 13 and 14.

Response to Arguments

Applicant's arguments regarding the above rejection are not persuasive.

Applicant states that Ahmed refers to a strong dishwashing compound for use on non porous tableware. While this is so, Ahmed specifically states that his inventive composition may be used for laundry bleaching (col 15 lines 55-58) and that Chloramine-T may be used as the bleaching agent (col 6 line 57).

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claim 5 objected to under 37 CFR 1.75 as being a substantial duplicate of claim 4. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Note that in claim 4 there is an = sign between Chloramine- and T which needs to be removed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-W and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Margaret Einsmann
Primary Examiner
Art Unit 1751

July 8, 2004